

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 9, 2005**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on November 9, 2005, beginning at 10:12 a.m. The meeting was tape-recorded and the tapes are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner Mike Joyner were present at the meeting.

MINUTES OF OCTOBER 14, 2005, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the October 14, 2005, meeting into the record. Seconded by Commissioner Joyner. So Ordered. Chairman Fox made a motion to approve the minutes from the October 14, 2005, meeting. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Joyner stated that he found no conflicts of interest. Chairman Fox stated that he found no conflicts.

I. HEARING CASES - 77 Listed

Chief Counsel Fred Gregory stated that Mr. Gandhi, manager of the business, was present to speak on behalf of First Offense case #34, Eagle Park Place. Mr. Gandhi stated that he has held his permits since November 2001. He went on to state that the violation occurred during a busy time and only after completing the sale did he realize that he hadn't checked the customers ID. Once he realized that he hadn't checked the ID, he asked for the ID, but the ALE Agent told him that transaction had already taken place. He went to District Court. Mr. John Ruth, Education Trainer, gave him and his employees a training class for this store. Mr. Ruth is scheduled to give a RASP class to his other stores. Mr. Gandhi asked the Commission for mercy.

Commissioner Joyner asked if the registers in his stores have the option of typing in the birth date. Mr. Gandhi stated the in this store he does, the register will either show yes or no depending on the birth date, but in the other stores the technology is more up to date.

Chairman Fox asked Mr. Gandhi what happened in District Court. Mr. Gandhi stated that he was told that if he attended a class and if he didn't receive any further violations before February 2006, the violation would be expunged from his record.

Chairman Fox made a motion to reduce the penalty to \$500.00. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Fred Gregory stated that Mr. John Geraffo, owner of First Offense case #41 Primos Pizza, was present to speak on behalf of his business. Mr. Geraffo stated that he has owned pizza parlors in West Virginia, South Carolina and North Carolina for 25 years and has also held malt beverage permits in all those locations. He went on to state that this is his first offense. Mr. Geraffo stated that the standard procedure in his business is when you place your order, if it includes an alcoholic beverage, then you are carded right then and then you are sent down the line to check out at the cash register. The underage person placed his order

with the server, went to the cash register to pay for his pizza and then said, “ I have a beer coming”. The employee at the cash register then said, “He has a beer coming”. Another employee brought the beer down to the cash register. Mr. Gerrafo stated that he was then pulled to the side by two undercover officers and was told that he just sold alcohol to an underage person. Since this incident has occurred, the procedure has changed. No alcohol is served unless the person serving it has seen proper ID.

Chairman Fox asked how many employees did he have. Mr. Gerrafo stated that at Christmas time he has about six or seven employees. Chairman Fox asked what happened to Mrs. Wright, the employee who sold the alcohol. Mr. Gerrafo stated that she is no longer employed with him.

Chairman Fox made a motion to issue a Written Warning upon the stipulation that he and his employees attend an RASP Class within the next 30 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Loay Ammar, owner of hearing case #16, Express Lane Food Store, was present to speak on behalf of his business. Mr. Ammar stated that when the violation occurred he was on an overseas phone call regarding his father, who had just had a stroke. The beer was put on the counter; Mr. Ammar didn't ask for ID he just took the money. He stated that he didn't realize he had sold the alcohol.

Commissioner Joyner asked what type of cash register does he have. Mr. Ammar stated that he has a regular register, he asks for the ID and figures the age up in his head.

Chairman Fox asked Mr. Ammar what had happened to his court case. Mr. Ammar stated that he paid his fine. Chairman Fox asked if this was his only store. Mr. Ammar replied that it was his only store. Commissioner Joyner then asked how close was his store to the college. Mr. Ammar said that his store is about five miles away.

Chairman Fox made a motion to ratify the offer in compromise as signed. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated the Mrs. Kelly Beane, manager of First Offense case #13, Trubuy 33, was present to speak on behalf of the business. Mrs. Beane presented some information to the Commission. Mrs. Beane showed the Commission pictures of the cash register showing where the alcohol key and the cigarette key were at the time of the underage sale and where they are now. Since this incident, the alcohol key has been moved, so that the keys are no longer next to each other. Mrs. Beane asked the Commission for mercy.

Chairman Fox asked Mrs. Beane how many employees does she have. Mrs. Beane stated that she has eight employees. Chairman Fox made a motion to suspend the fine upon the stipulation that she and her employees attend an RASP class within the next 30 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Mr. Mustafa Hizam, manager of hearing case #75, Mikes Food Mart, was present to speak on behalf of the business. Mr. Hizam stated that he didn't have a problem turning in the permits; he just needed more time so that the owner can come back and sell the business.

Commissioner Joyner asked Mr. Hazim if he was asking the Commission to agreed to let him continue to sell without a suspension of permits while the business was being sold. Mr. Hazim stated again that they needed more time so that the owner could sell the business.

Commissioner Joyner asked Mr. Hazim if he had any comments on the previous violations. Mr. Hazim stated that he had no comments.

Chairman Fox asked Mr. Hazim if he had any potential buyers for the business. Mr. Hazim stated that he was going to post an ad in the newspaper. Chairman Fox asked him if he had already posted the ad. Mr. Hazim stated that he had not done that yet and right now was only using “word of mouth”.

Commissioner Joyner asked Deputy Administrator Mr. Doyle Alley how the process went as far as someone selling a business when there is a pending violation. Mr. Alley stated that were a couple possible outcomes, one way would be that the Commission would require that the penalty be paid before we would be willing to cancel the permit(s), another way would be that the Commission would allow the business to surrender the permit(s) for cancellation without paying a fine.

Chairman Fox asked where the owner of the business was. Mr. Hazim stated that the owner was out of the state. Chairman Fox asked where out of stated. Mr. Hazim replied overseas, in Yemen.

Chairman Fox asked him if he was working that night. Mr. Hazim stated that he was. Chairman Fox further asked him if he was aware of the 16 bags of marijuana. Mr. Hazim stated that he was not aware of that, the guy was outside of the store and he had no idea of what he was doing. He only paid him to come sweep and take out trash. Chairman Fox asked how long had the owner been overseas. Mr. Hazim stated that he had been gone since March 2005 and he is suppose to return in January 2006.

Chairman Fox asked Ms. Cowick if she had anything to add. Ms. Cowick stated that she didn't have an issue with the Commission's decision to give them more time to sell the business if they so chose.

Commissioner Fox stated that in the violation report submitted by Rocky Mount Police Officer P.E. Gardner, the owner, Mr. Jaiyash Albajal was asked to get in contact with him. That was in 2004 and he was asked again with no response from owner. Chairman Fox stated that since the owner hadn't come home to check on his business, the business wasn't that important to him, therefore the permits are not important to him.

Chairman Fox made a motion to ratify the offer in compromise as signed. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that hearing case #76, Airport Blvd. Amoco Food Shop, was added on the agenda. Mr. Joseph Muller was present to speak on behalf of the business. Mr. Muller stated that he has operated the business since September 2003 and is asking the Commission for mercy regarding this case. He went on to state that the case was dismissed in Criminal Court. The employee that sold to the minor was present. Mr. Muller stated that he had the same problem as the previous case, regarding the alcohol key and cigarette key. He went on to state that he doesn't have the type of business where they get violations; they usually get citations from ALE. Mr. Muller stated that they are very proactive and have already called Mr. John Ruth, Education Trainer to schedule a class, which they completed and have already received the certificate, although it needs to be signed.

Chairman Fox asked Mr. Muller to give him the certificate so he could sign it.

Commissioner Joyner asked Mr. Muller what he has done to rectify the situation. Mr. Muller stated that now they have to physically key in the day, month and the year.

Commissioner Joyner made a motion to reduce the fine to \$1,000.00 upon the stipulation that he and his employees attend a RASP class within the next 30 days. Seconded by Chairman Fox. So Ordered.

Mr. Gregory stated that Mr. Mike Ilderton, president of Ilderton Oil Company, was present to speak on behalf of add-on hearing case #77, Iloco Mart 5. Mr. Ilderton stated that they do not condone underage selling. He went on to state that they require their employees to attend classes put on by ALE, as well as participating in the "We Card" program. His employees are required to attend a class put on by ALE in Greensboro, NC on November 14, 2005.

Chairman Fox asked Mr. Ilderton how long had Mr. Wilkes, employee that sold, been in his employment. Mr. Ilderton stated that he didn't know, but Mr. Wilkes had been the manager for about three years. Mr. Wilkes went to court and the case was dismissed, but in order to stay employed with Ilderton Oil Company, Mr. Wilkes had to attend BARS class and a class called Incentives. The rest of his employees have also

attended these programs, along with the “We Card” program annually, most employees attend these classes twice a year.

Mr. Ilderton asked the Commission to waive the penalty. Commission Joyner asked Mr. Ilderton if his company keeps track of the number of times a minor tries to purchase alcohol and is rejected. Mr. Ilderton stated that they do not.

Chairman Fox asked Mr. Ilderton how many stores they have. Mr. Ilderton stated that they only have one store.

Commissioner Joyner made a motion to reduce the penalty to \$500.00. Seconded by Chairman Fox.

Assistant Counsel Renee Cowick stated that hearing case #58, B & S Super Market II, would be continued to the December meeting.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of add on hearing cases #76, Airport Blvd. Amoco Food Shop and case #77, Iloco Mart 5, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

II. FIRST OFFENSE CASES – 43 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on November 9, 2005, pursuant to the Commission’s authorizing resolution dated November 8, 2002:

1. Capis – 10500 Chapel Hill Road, Morrisville, NC 27560
2. Oak Hollow Golf Course Grillroom – 3400 North Centennial Avenue, High Point, NC 27260
3. Pizza Hut 618027 – 1473 East Cone Boulevard, Greensboro, NC 27405
4. Sams Mart 789 – 1102 Summit Avenue, Greensboro, NC 27405
5. Time Savor – 5555 Murchison Road, Fayetteville, NC 28301
6. Eckerd Drugs 1037 – 1800 East Franklin Street, Chapel Hill, NC 27514
7. Eckerd Drugs 3936 – 1690 US Hwy 1, Southern Pines, NC 28387
8. Fast and Fresh Food Store – 395 Main Avenue NE, Hickory, NC 28602
9. Green Street Grocery – 1924 East Green Drive, High Point, NC 27260
10. Jimmy’s Seafood and Oyster Bar – 3440 Frontis Street, Winston-Salem, NC 27103
11. J & B Food Mart – 5216 Germanton Road, Winston-Salem, NC 27105
12. Riley Hill Grocery – 6300 Riley Hill Road, Wendell, NC 27591
13. Tru Buy 33 – 600 South Regional Road, Greensboro, NC 27409
14. Applebee’s Neighborhood Grill & Bar – 1990 Griffith Road, Winston-Salem, NC 27103
15. Berkleys – 819 West Avenue, Lenoir, NC 28645
16. Citi Stop 112 – 45 Charlotte Street, Asheville, NC 28801
17. J B Food Mart – 2803 West English Road, High Point, NC 27262
18. Kim’s Amoco – Hwy 21 North and Gilead Road, Huntersville, NC 28078
19. La Bamba Mexican Restaurant – 501 South Regional Road, Suite A, Greensboro, NC 27409
20. Red Rooster Country Marker – 213 South Market Street, Madison, NC 27025
21. Terrys Discount Grocery – 1020 South Main Street, High Point, NC 27260
22. J Cash Mart – 412 Carthage Street, Cameron, NC 28326
23. Longhorn Steakhouse – 955 Hanes Mall Road, Winston-Salem, NC 27103
24. Lubranos Italian Restaurant – 1100 East Lexington Avenue, High Point, NC 27262
25. Rio Grande – 2205 South Oak Ridge Road, Oak Ridge, NC 27310
26. Sagebrush Steakhouse and Saloon – 5920 University Parkway, Winston-Salem, NC 27105
27. Short Stop Food Mart 76 – 3828 Hwy 15-501 East, Carthage, NC 28327
28. TGI Fridays – 3320 Silas Creek Parkway #348, Winston-Salem, NC 27103
29. Yamax House of Steak and Seafood – 2300-C North Main Street, High Point, NC 27265

30. Arigato Japanese Steak and Seafood House – 585 Bethesda Road, Winston-Salem, NC 27103
31. Bessemer Billiards – 1207 East Bessemer Avenue, Greensboro, NC 27405
32. Bi Lo 435 – 10564 Hwy 15-501, Southern Pines, NC 28387
33. Bi Lo 583 – 3627 Clemmons Road, Clemmons, NC 27012
34. Eagle Park Place – 2003 NW Cary Parkway, Morrisville, NC 27560
35. Nu Go – 910 Prospect Street, High Point, NC 27260
36. Elizabeths Pizza – 918 Summit Avenue, Greensboro, NC 27405
37. Fuel Mate Express 4 – 7249 Hwy 15-501, Carthage, NC 28327
38. Wilco 1873 – 213 East Jefferson Street, Jackson, NC 27845
39. Quick Mart – 1041 East Lexington Avenue, High Point, NC 27262
40. Real Creations – 136 West Lexington Avenue, High Point, NC 27262
41. Primos Pizza Place – 816 Cross Creek Mall, Fayetteville, NC 28303
42. Kellys North Main – 3010 North Main Street, High Point, NC 27265
43. Kangaroo Express 3096 – 3601 Sunset Avenue, Rocky Mount, NC 27804

Chairman Fox made a motion to approve the remaining Offers in Compromise for the First Offense cases, with the exception of First Offense cases #13, Trubuy 33, case #34, Eagle Park Place and case #41, Primos Pizza Place, which had been ratified earlier. Seconded by Commissioner Joyner. So Ordered.

III. OTHER BUSINESS

Chief Administrator Michael Herring presented the Commission with a request from LB&B, for a price adjustment. On June 27, 2005, the Commission received a request from Walter D. Hayes, Director of Support Services for LB&B, Associates, Inc. Mr. Hayes documented that there is a concern that a price adjustment is needed. There are two areas of concern, the first area is that price of fuel over the past twelve months has substantially increased and the other area is that there has been an increase in the amount of cases that are being shipped out. Propane is needed in order for these additional cases to be picked up and to run the forklifts.

Commissioner Joyner asked Mr. Herring if the only price adjustment was for fuel. Mr. Herring stated the only request coming before the Commission today is for fuel. There was a request to change some of the contract specification as far as the insurance is concerned, but they are still working on it. The request is for \$105,646.59. That would change taking the total adjusted flat fee to \$3,632, 059.07.

Chairman Fox asked Mr. Herring if this would be on a monthly basis. Mr. Herring confirmed that it would be a monthly payment, retroactive back to July 12, 2005.

Mr. Herring recommended that the Commission approve the request. He also presented the Commission with an amendment to the Warehouse contract prepared by Assistant Counsel, Timothy W. Morse, to be signed by the Commission if they approved the request. Chairman Fox made a motion to approve the request. Seconded by Commissioner Joyner. So Ordered.

ADVERTISING SIGNAGE - ANHEUSER-BUSCH AND CAROLINA BOBCATS

Mr. Millan stated that because of G.S. 18B-1116, which prohibits exclusive outlets and NCAC 2T.0707, entitled Inducements Tide House. The Carolina Bobcats and Anheuser-Busch are seeking approval from the Commission that the Local Sports Broadcast Agreement and Advertising Signage Agreement do not violate the Tide House Statue and rule. He went on to state that agreements were drafted to state clearly that there is an independent concessionaire who makes all the decisions with respect to pourage and all decisions with respect to point of sale advertising. Anheuser-Busch plays no role in those processes.

Mr. Millian stated that the issue regarding exclusivity was brought up at a previous meeting and after reviewing the rules of the Commission and the North Carolina Statues, he was unable to find anything that restricts or prohibit exclusivity in advertising promotional contracts for alcoholic beverages.

Commissioner Joyner made a motion to approve the exclusivity agreement between Anheuser-Busch and Carolina Bobcats. Seconded by Chairman Fox. So Ordered.

Chairman Fox made a motion to approve the new Commission Meeting dates as follows: January 20, 2006, February 17, 2006 and March 17, 2006. Seconded by Commissioner Joyner. So Ordered.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division